



**Idaho Department of Lands  
Proposed Rulemaking  
Unresolved Rule Changes Summary**

**IDAPA 20.02.14**

**Rules for Selling Forest Products On State-Owned Endowment Lands**

**Docket: 20.0214.1601**

Members of the public participated in the Department's Proposed Rulemaking process by attending the hearings and submitting written comments.

Key Information considered by the Department included applicable statutes, timber sales data and information provided by the public during the Negotiated and Proposed Rulemaking process. In addition, the Department solicited information from the pole companies, other industry representatives and other states.

Key documents from the Rulemaking Record, which includes rule drafts, written public comments and documents distributed during the negotiated rulemaking process, are available at <https://www.idl.idaho.gov/rulemaking/20.02.14/index.html>. The entire rulemaking record is available for review upon request to the Department.

At the conclusion of the negotiated rulemaking process, the Department formatted the final rule draft for publication as a proposed rule in the Idaho Administrative Bulletin. Other than minor formatting, no substantive changes have been made from the Proposed Rule.

The following unresolved issues were raised during the rulemaking process:

Comments Received (Negotiated)	IDL Response
<b>Sealed Bids – One of the written comments encouraged the Department to explore the possibility of using Sealed Bids rather than Oral Auctions to sell timber.</b>	<b>This topic was discussed during the negotiated rulemaking meetings. The Department has explored that option in the past but we have been advised by the Attorney General's Office that the State Constitution limits us to public auctions for the purpose of selling timber and that sealed bids do not meet public auction requirements. The Department is looking into using online (web based) bidding which does meet public auction requirements.</b>
<b>Sort Sales/Delivered Product Sales - This type of timber sale was discussed both in the meetings and in written comments as an option available to the Department to continue to provide a source for poles.</b>	<b>During the meetings we received input both in favor and opposition to the use of this type of timber sale. The Department is considering a very limited use of this tool in the future but it would take time and would remain a small component of the timber sale program.</b>
<b>Small Business Set-Aside Sales – In the written comments the Department was encouraged to look into the possibility of developing a Small Business Set-Aside program as a means of slowing consolidation.</b>	<b>The idea of the department beginning to offer Small Business Set-Aside sales was also discussed at the meetings. The Department has analyzed this option in the past and concluded that it is inconsistent with our Constitutional mandate and not appropriate for the Department to provide such sales</b>



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	which could favor one sector of the forest products industry. The Department already offers a variety of sale sizes that are accessible to purchasers of all sizes.
10% of the Annual Cut should be Allocated to High-Value Forest Product Sales	The Department cannot guarantee that a specific percentage of the volume being offered every year would meet the definition of a High-Value Forest Product due to market changes, preferred species, management needs, salvage efforts and other factors.
Using Value or Volume to determine the implementation of a High-Value Forest Product Sale	There was a significant amount of discussion and comments related to using value or volume to determine if a timber sale would meet the criteria to be sold as a High-Value Forest Product Sale. There were merits and limitations to using both methods. The Department has chosen to go forward with volume after weighing the issue.
Purchaser's Option to remove Forest Products	There was some discussion about how to phrase the rule related to a Purchaser's option to manufacture products from a timber sale, and when a Purchaser would have to declare what they intend to make. Currently the Purchaser must declare in advance what products they intend to manufacture on a timber sale. Following discussion the Department has decided to remove the language entirely, assuming that it will be understood that a Purchaser may manufacture any products that meet contractual merchantability specifications and that determination does not have to be made until a "Timber Sale Logging and Operation Plan/Cutting Permit" is filed.
Replacement for Linear foot Measurement	There was consensus that there needed to be a replacement chosen for linear foot measurement of poles since the current linear foot conversion table in the rules grossly underestimates the actual volume of poles for each lineal foot size class. The Department agrees that either Scribner Board Foot Measure or Cubic Measure needs to be used. We are working toward replacing linear measurement with either option.
"Cedar poles should be harvested before other species so that they are not damaged"	Currently, cedar poles are sold in separate sales that specifically target the removal of poles, Idaho is the only state or entity that uses this practice. Very often these sales do not accomplish the specific silvicultural objective resulting in the need to re-enter the stand to finish the silvicultural treatment. The resulting additional entry increases the possibility of damaging the environment,



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	<p>duplicates many sale preparation and administration costs, and delays establishment of the next stand of timber. As required under the current rules, the Department has concluded that conducting an additional entry to remove cedar poles separately does not meet our fiduciary or stewardship responsibilities. Poles may be harvested with minimal damage during normal harvesting operations as part of a sale whose design is intended to achieve silvicultural objectives and remove all designated products/species in a single entry as is common for both private industry and other states.</p>
<p>Each timber sale must have a single winning bidder responsible for removing all of the required timber from the sale forcing the purchaser to market material that they would not otherwise use in their operation and resulting in lower returns.</p>	<p>The pole companies consider this aspect of timber sale bidding to be a burden. The fact is that this is the burden placed on every timber sale bidder who is successful. There is no single company in Idaho that will use every product generated on every sale. Therefore it is customary that the Purchaser will market those products that they do not use themselves to other companies. It is unrealistic to allow multiple bidders to purchase different products on a sale and expect that those products will then be harvested in a timely and efficient manner.</p>
<p>“Making poles a separate biddable item will not work. Biddable forest products must be required to be removed and accurately estimated and measured. Too Speculative. Opens bidding to games.”</p>	<p>The Department has addressed this issue by not making poles a separate biddable item but by making the High-Value Forest Product a biddable item so that we can require removal without specifying in what product form it is removed in. To require the removal of the material as a specific product would not have worked. Purchasers would have resisted making the higher value product even if they had bid it up (playing games).</p>
<p>Concern was expressed over the detail and results of a Net Present Value analysis that was used by the Department to provide some of the supporting documentation for the need to address the pole rules.</p>	<p>The purpose of the NPV calculations was to provide a comparison for analysis between different stand rotations and number of entries. It was purposely kept simple to avoid confusion and demonstrate the NPV concept. The analysis does show that the Department will not be attempting to grow stands to very old ages where large poles would likely occur because the premium received for the large poles is not enough to offset the time value of money at a 4% discount rate. The analysis further indicates that additional entry requirement to remove cedar poles separately does not provide higher returns under any rotation length.</p>



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Comments questioned the Department's assumption that the dual entry caused by the use of pole sales results in a "near doubling" of costs and workload.	The Department stands by its conclusion that conducting a separate pole sale followed by a second sale doubles or nearly doubles sale preparation and administration costs compared to removing all the products in a single timber sale.
Pole companies assert that because cedar poles are typically worth more than other sawlog products that it pays to remove cedar poles separately.	Poles do in fact generate a higher price than other products but using average prices over the last three years and compensating for scaling advantages built into the current rules, the Department has demonstrated that the premium received for pole quality cedar does not offset the additional sale prep and administrative costs and the delay in establishing regeneration. In other words, the financial returns for conducting two sales compared to removing all the products in one sale do not support the assumption that the beneficiaries make more money with the current requirements to conduct two separate timber sales.
"Selling cedar poles in one auction and selling remaining mixed timber species in a second auction can generate higher financial returns."	A single sale cannot have multiple purchasers operating simultaneously within the same sale area without inevitable conflict, inefficiencies and legal/safety concerns. Additional entry sales (if poles and mixed species are sold separately) that result in poles receiving a small premium over sawlogs don't generate enough additional revenue to offset the costs and risks associated with the additional sale. An NPV analysis provided in the comment letter used the best case price scenario from a single quarter to try to demonstrate this while the Department's analysis used actual 3-year averages.
<b>Comments Received (Proposed)</b>	<b>IDL Response</b>
<b>Comments from the Moscow Hearing</b>	
The comments from Negotiated Rulemaking are incorporated by reference into Proposed Rulemaking by request	Unchanged from above
IDL believes the new Proposed Rules will cut expenses but IDL has failed to grasp the revenue implications of not selling cedar poles as the "super valuable commodity" they are.	The Department is certain that the new rules will significantly reduce expenses. At a minimum the production of a separate timber sale to harvest poles requires the forester to refresh boundaries, cruise the stand again, analyze the cruise data, produce new timber sale documents, submit the additional sale for approval to the resource supervisor, the area manager the operations chief, and finally the State Forester then the sale must be advertised, an auction must be held, the forester will administer the sale and finally close the sale and take care of hazard



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	<p>mitigation and continue on with silvicultural activities. A large pole sale of 500 mbf might produce an additional \$50,000 in gross revenue. However, much if not all of that is consumed by the additional costs, delays in establishing regeneration and damage to the residual stand. IDL contends that if the sale is incorporated into a single sale under the proposed rules the potential to receive most of the high value revenue remains, while the additional costs would not occur. If cedar poles are in fact a “super valuable commodity” the incentive for purchasers to manufacture and market poles while they are harvesting the rest of the sale will be there and they will remain.</p>
<p>The Negotiated Rulemaking “didn’t go as long as it should have” and “we really didn’t end on anything that was even close to consensus.” Did not achieve what “negotiated rulemaking is intended to do.”</p>	<p>The idea of addressing these rules has been openly discussed for several years. Two pre-rulemaking meetings were held in May of 2016. The Negotiated Rulemaking Meetings were held on June 6 and 13, 2016. The formal comment period was extended until July 1, 2016. No request was made to hold an additional Negotiated Rulemaking Meeting. IDL agrees that a consensus was not reached at the last meeting but our impression was that consensus would not be reached on several key issues so the decision was made to move forward. Negotiated rulemaking is intended to provide an opportunity for the state to come to a consensus with stakeholders but it is not a requirement of the process. In the event that consensus is not met rulemaking may still go forward.</p>
<p>The “gross revenue, is going to fall off.” Even with an improved expense side you’re going to end up with less net revenue going to the endowments. Maybe it’s good from IDL’s silvicultural perspective but it’s going to hurt the endowments.</p>	<p>As discussed the increased revenue from selling poles separately may cover the cost of producing an additional sale under optimal circumstances, in the view of the department it does not outweigh the additional risk related to another entry. IDL’s Mission is to “...maximize long-term financial returns...” this means protecting the productivity of endowment lands and following sound silvicultural practices. An additional entry unnecessarily exposes the site to potential environmental impacts that could negatively impact long-term productivity.</p>
<p>IDL should institute a Pilot Program lasting at least one year in which they sell cedar poles on a board foot basis, but leave the current pole rules and policy in place.</p>	<p>Under the current rules IDL cannot sell poles by the board foot, that is one of the problems requiring us to address the current rules. Even if we only changed the rules related to the measurement of pole volume it would still not address the issue of requiring an</p>





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	additional entry exposing endowment lands to unnecessary potential impacts and limiting management options for our foresters.
<b>Comments from the Sandpoint Hearing</b>	
Oral Auctions offer competitive advantages to the largest purchaser's and result in a bid price that is barely better than the second position rather than a company's "best" bid.	See discussion in the negotiated rulemaking comments (first comment). The department is continuing to move toward instituting online bidding which should have some beneficial impacts related to leveling the field. However, IDL must adhere to the legal requirement of holding a public auction.
Delivered Product or Sort Sales	See discussion in the negotiated rulemaking comments (second comment). The Department is moving forward with developing a limited delivered product program but this will take time to develop and implement.
Small Business Set-Aside	See discussion in the negotiated rulemaking comments (third comment).
A specific amount should be set aside for high value forest product sales (10%)	The Department will report annually how much volume is projected to be sold under rule 026. Annual Sales Plan. Part of the justification for reforming the current rules is to relieve artificial pressures on foresters trying to make silviculturally sound management decisions. To replace one set of requirements with another does not achieve that goal. However, a quick review of forest inventory data suggests that as much as 30% of IDL stands containing cedar could qualify for High-Value Forest Product designation.
24.01 should read "value" not "volume"	See discussion in the negotiated rulemaking comments (second comment on page 2).
Lump Sum Timber Sales	The Department already uses lump sum timber sales on a very limited basis but almost always with very small sales, low value forest products, or where scaling could be costly. When large sales or sales with high value products are offered lump sum the risk can become too great for both sides and returns can suffer. Because of the relatively high error present in the measurement of standing timber the Department is not comfortable with offering large sales or higher value products using a lump sum system.
"High-Value Forest Product Sales... will not be materially different from regular timber sales." "Selling all products together without product differentiation forfeits the higher returns that could be earned from premium products like cedar poles."	The on-the-ground implementation of these sales will not be materially different. One of IDLs goals in opening rulemaking was to eliminate the additional sale that resulted from applying the current rules. Our expectation is that pole sales will be replaced by small sales that target High-Value products but the entire silvicultural objective would be accomplished in a single timber sale. If high-value products



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	<p>exist on the sale the purchaser will have the option to appraise for and manufacture those products.</p>
<p>“Individual species and product values will be lost using this auction method.”</p>	<p>The Department is convinced that the existing rules, requiring linear foot measurement (LF) and inaccurate conversion to Scribner (BF), effectively limit bidding on pole sales to only the two remaining pole companies. Under the proposed rules, with the competitive advantages removed, bidding will be open to many more potential bidders. By offering the ability to bid on the high-value products separately, using a single unit of measure, we believe that smaller operators can better leverage their competitive niche resulting in a greater return. Products that do not offer competitive pricing may shrink in the marketplace to a level supported by their pricing.</p>
<p>“IDL does not currently know the “market” stumpage values for cedar sawlogs or cedar poles.”</p>	<p>This is currently true, because we have rules that limit a purchaser’s ability to apply overbid (for good reason). By using the proposed auction method we will be able to determine much more accurate stumpage prices for both poles and sawlogs because there would be genuine competition for them and an equal unit of measurement.</p>
<p>“The IDL has not properly evaluated whether or not the sale of poles, the separate sale of cedar, or the individual sale of other forest products can generate higher returns on IDL timber.”</p>	<p>IDL has conducted internal and external interviews, talked with purchasers and foresters, and performed economic analysis including NPV calculations, actual price evaluations, scaling studies, and auction results. All of the evidence leads the Department to conclude that the current rules do not result in enough financial gain to outweigh the actual cost and the potential risk.</p>
<p>IDL is rushing the process. IDL should put the process on hold, continue with the current plan, leave the current rules and policy in place “but sell all poles and associated cedar sawlog volume removed during pole sales on a board foot basis...” then restart the rulemaking process if necessary.</p>	<p>In reality, the process of addressing the current rules has been going on for a couple of years now. To attempt a trial period as requested, the department would have to remove the rules that currently prevent poles from being sold by the mbf. This requires that we go forward with several of the rule changes currently proposed. While this might address (on a limited basis) some of the Department’s financial concerns, it does nothing to address the other issues with the current rules. The unresolved issues that are currently identified in this document are not likely to be resolved with additional negotiation. There is a very high likelihood that we are facing the same issues following the delay with one more year of the department implementing outdated and</p>



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	inappropriate rules to show for it. The Department does not believe that a delay would result in a significantly different outcome.
Isolating higher value timber increases revenues.	Perhaps, under ideal circumstances, this could be true. When weighed against the inaccurate conversion of LF to BF, cost of additional sale, and delayed implementation of silvicultural plan the current rules are not financially justifiable.
Still requires that the successful bidder buy the entire stand	See discussion in the negotiated rulemaking comments (first comment on page 3).
Taking away the pole sales will further reduce the ability to get high dollar volumes out and will reduce competition.	Currently, there are no more than two likely bidders on pole sales and in some locations only one likely bidder. One of IDLs goals here is to increase competition. The financial advantage provided to the pole industry by the current rules has limited potential competition. IDL wishes to create competition by implementing the proposed rules.
"...put this rule making proposal on hold until we do have a good consensus within the industry and the department on how to proceed."	The Department does not believe that a consensus can be reached on the issues of offering pole sales as stand-alone sales, the rules requiring IDL to offer pole sales if they exist in any specific density, and the requirement to provide a specific number of poles each year, limits IDL forest management options. We have outlined why each of these issues is not in the Department's or the endowment's best interest and industry has not appeared to be willing to compromise. On the rules related to the measurement of volume we believe that consensus was achieved in that those rules needed to be rescinded because the advantages offered by the current rules were indefensible.
<b>Written Comments</b>	
The Department needs to more actively merchandise these high value sales.	The department will continue developing a limited delivered product program to improve IDL's ability to merchandise high value products under beneficial circumstances. There really is no way for the Department to "merchandise" or sell individual products from a timber sale unless it is delivered product. Current sale procedures allow only one purchaser and it is up to them to "merchandise" the products on the sale to maximize their returns.
The proposed rule not only harms and hinders the pole company's ability to prosper but other businesses as well	The purpose of the proposed rules is not to harm nor hinder anyone's business but it is to increase competition for a very valuable product. The current rules provide an inappropriate advantage to pole companies





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	that have not resulted in an appropriate level of competition and have shut some potential purchasers out of the process. The product needed by these secondary producers will still be provided by the Department. If the demand for these products is there they will find their way to the marketplace.
<b>The Proposed Rules are not a product of Negotiation</b>	The proposed rules were negotiated but not necessarily agreed upon by all parties. Negotiation does not always result in consensus. The Proposed Rules represent the language the parties were discussing, when the final Negotiated Rulemaking meeting ended. The Department does not believe that additional negotiation would have led to consensus. Negotiated Rulemaking is an optional step in the rulemaking process its level of success does not dictate the continuation of the process.
<b>“...the Idaho Department of Lands representatives made it clear that selling cedar poles as a separate and valuable timber product would not be considered during negotiation.”</b>	This is a position the Department holds because the additional sales that occur because of the current rules fail to maximize financial returns, increases cost, results in greater site and stand damage and limits proper planning. The Department chose this position not to punish or reward any particular segment of the industry but to meet our fiduciary and stewardship responsibilities. Further evidence of the validity of the argument can be found in the standard practices of the industry. No other private or state forest land owner makes it a regular practice to sell their pole material as a separate sale.
<b>IDL did not concede on any point proposed by the pole industry</b>	Concessions were made by all sides, including IDL, during the negotiated rulemaking process to come up with the proposed rules.
<b>Will western red cedar poles be sold as required product manufactured as poles or will the volume of pole quality cedar on endowment lands be included with cedar sawlog volume on timber sales?</b>	Rule 024.07 Purchaser’s Option, already allowed purchaser’s the option of choosing to harvest cedar as poles or sawlogs. We are striking 024.07 because it isn’t necessary to tell a purchaser in rule that they may manufacture the product that will maximize their returns so long as it meets contract merchantability specifications. During negotiations the cedar pole company representatives did not express a desire to change this rule.
<b>The Capstone Project Report used by IDL as part of the basis for changing the rules used anecdotal evidence.</b>	It is true that some “anecdotal evidence” was derived through interviews and observations that still led to valid conclusions. It wasn’t all anecdotal evidence. Financial analysis and projections using actual data were also used.



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<p>The report only used the last three years average to compare pole and sawlog prices ignoring historical prices. The current proposed rule is based on a near historic high in price differential between poles and sawlogs.</p>	<p>Historical prices are just that, history. Proper analysis requires using up to date information. Using some historical prices white pine is worth more than cedar poles, but today white pine is worth less than lodgepole pine. We would not use historical prices to evaluate white pine markets and we shouldn't use them to evaluate cedar. Consumer demand is shifting and we should be capable of reacting to these market shifts, which occasionally require the revision of antiquated rules.</p>
<p>During a previous rulemaking effort in 1984 "...the pole industry demonstrated that the pole sale policy of double entries provided a much higher return to the endowments than any other proposal being considered."</p>	<p>That was 1984. No such demonstration has been made today. In the data provided by the pole industry as part of the comments in Negotiated Rulemaking, by "cherry picking" the best case scenarios for price differential between sawlogs and poles, two out of the past ten years might have produced a higher return. An extra entry with additional costs will not result in a greater financial return than a single entry marketing all products.</p>
<p>The Capstone Report Places a high significance on Net Present Value (NPV) calculations that indicated a reduced value of the double entry system of pole harvest. Industry provided another analysis with different results.</p>	<p>The Capstone Report used some NPV analysis to demonstrate two ideas. First, it did not make sense from a financial stewardship point of view for the Department to grow older stands to get larger poles. Second, that it does not make economic sense to use two entries delaying your silvicultural stand establishment goals. Actual prices from the past three years were used in the analysis. The analysis provided by industry selected the best two years out of the past ten for their analysis which just barely indicated a possible increase in revenue using two entries. The report was trying to demonstrate simple concepts of the value of money over time so the analysis was kept as simple as possible. The industry was critical of that simplicity but the demonstration that unnecessary additional entries were not cost effective is still valid.</p>
<p>The idea that there are a large number of potential bidders that will be attracted to the bidding table by including additional cedar volume in sawlog sales is not supported by sales results. Pole volume added to sawlog sales in the northern areas would benefit one purchaser.</p>	<p>The last time a purchaser other than a pole company bought a pole sale was 2002. The IDL currently observes only two potential bidders on pole sales. In the southern parts of cedar production there is really only one potential bidder on pole sales. We have multiple purchasers show up at nearly all of our other sales. The IDL anticipates more potential bidders on this volume if we sell it under the proposed rules. There is one purchaser that buys most of the volume in Northern Idaho but they do so in competitive bidding. There are currently only two</p>



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	<b>purchasers (pole companies) who can buy pole sales with the current rule structure.</b>
<b>The pole industry cannot buy timber sales that have a high sawlog component because they cannot afford the associated mixed sawlog volume that would be included.</b>	<b>Our intention is to offer the high-value volume mostly in smaller sales that might attract smaller purchasers and give them an opportunity to bid and compete for specific products that fit their niche. On all other timber sales offered by IDL the purchaser must remove all of the designated merchantable products in order to accomplish the silvicultural objectives. Other purchasers market the products that they do not use at their facilities to other mills. There is no purchaser in Idaho capable of maximizing the value of all of the potential products from IDL timber sales.</b>
<b>“The proposed IDAPA 20.02.14 Rule that would rewrite the manner in which cedar poles are sold from endowment lands is bad for Idaho, anti-free market, and terrible for schools and communities.”</b>	<b>Through careful analysis the Department has come to the conclusion that these rule changes will significantly benefit the state of Idaho and its communities. The current form of the rules is counter to free markets and our fiduciary mandate by limiting potential bidders. The goal of these rule changes is to open this volume to more competition that benefit the endowments, the State and its communities.</b>
<b>“A cedar pole has an approximately 33% higher value than a cedar saw log.</b>	<b>Using actual IDL delivered log price data and actual scale data it was determined that the realized price differential is far less than 33%, the actual recovered value is just under \$100/mbf or about 10-15%. Add in the expense for an additional entry to remove cedar poles and most if not all of the value difference is lost. Because of the lack of competition for pole quality cedar the endowments are likely missing out on some of this potential value. It is our intention to increase the bidding pool and capture that value.</b>